

1 Todd E. Zenger (*pro hac vice* UT Bar 5238)
Duren IP, PC
2 610 E. South Temple Street
Suite 300
3 Salt Lake City, UT 84102
801-869-8535
4 Email: tzenger@durenip.com

5 Jeffrey J. Whitehead (NV Bar 3183)
Whitehead & Burnett
6 6980 O'Bannon Dr.
Las Vegas, NV 89117
7 702-267-6500
Fax: 702-267-6262
8 Email: jeff@whiteheadburnett.com

9 *Attorneys for Emanation Communications Group LC*

10 **IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

<p>11 12 LEX VEST LTD, a Nevada limited liability company; 13 Plaintiff, 14 v. 15 EMANATION COMMUNICATIONS GROUP LC, a Utah limited liability company; DOES 1 through 50; and ROE ENTITIES 51 through 100, inclusive, 16 Defendants.</p> <hr/>	<p>Case no. 2:22-cv-01226-ART-BNW INTERVENOR'S RESPONSE TO PLAINTIFF'S OPPOSITION (ECF 110)</p>
<p>17 18 Emanation Communications Group LC, a Utah limited liability, 19 Counterclaim Plaintiff, 20 v. 21 Lex Vest Ltd, a Nevada limited liability company,</p>	

1

Counterclaim Defendant

2

3

Emanation Communications Group LC, a
4 Utah limited liability,

5

Third-Party Plaintiff,

6

v.

7

Lex Technica LTD, a Nevada limited
liability company, Sam Castor, a manager
8 of Lex Technica and Nevada resident,
Adam Knecht, a manager of Lex Technica
9 and Nevada resident, Nathan Morris, a
manager of Lex Technica and Utah
10 resident, and Braden John Karony, an
individual and resident of Utah,

11

Third-Party Defendants.

12

13

14 Jennifer Karony, Intervenor, responds to Plaintiff's opposition ECF 110, as
15 follows:

16 This Court has original, first-filed jurisdiction and to date exclusive jurisdiction
17 over Plaintiff's breach of contract claim. As such, it does not appear that the Utah State
18 Court has jurisdiction to control Plaintiff's claim. The appointment of receiver and his
19 powers are the subject of an appeal in Utah, *Ronin et al. v. Emanation, et.al.*, appellate
20 case nos. 20230396-CA and 20230397-CA. Until those issues are decided, this Court
21 should retain jurisdiction over Intervenor's motion, and potential counter-claims should
22 Plaintiff proceed with its amended complaint against Jennifer Karony and others (ECF
23 101-2).

1 **1. This Court has original, first-filed jurisdiction and exclusive**
2 **jurisdiction over Plaintiff's breach of contract claim.**

3 Plaintiff strategically chose to bring its breach claim in this Court, filed July 31,
4 2022 (ECF 1). Plaintiff intentionally chose not to sue Defendants in Utah State courts.

5 Further, Plaintiff has not asserted its breach claim in the later-filed Utah
6 litigation. The Utah court does not have subject matter over Plaintiff's breach claim and
7 cannot assume it, let alone decide it when that issue is exclusively before this Court in
8 this action. To date, adjudication of Plaintiff's breach claim resides exclusively in this
9 Court.

10

11 **2. The receivership matter itself is still in question.**

12 The matter of the receivership has not been fully decided. The Utah Court's
13 order granting a motion for appointment of a receiver and the Utah Court's separate order
14 appointing a receiver have been appealed in *Ronin et al. v. Emanation, et.al.*, appellate
15 case nos. 20230396-CA and 20230397-CA. A successful appeal will put aside any
16 alleged receivership issues.

17 Issues in the appeal will include the error of the Utah Court to *de facto* decide or
18 control issues not before the Utah Court, including the merits of and defenses to
19 Plaintiff's breach claim upon which the Utah Court relied when granting the now
20 appealed orders.

21 Because the controlling nature of the receivership is not settled the receivership
22 order of the Utah Court should not be presumed or deemed final and controlling.

23

1 **3. The Receiver does not control Plaintiff's breach claim**

2 In any event, Plaintiff's breach claim is not an asset of Emanation. Plaintiff is
3 not one of the receivership entities in the Utah litigation. As a result, Plaintiff's breach
4 claim does not appear to be within the scope of the Utah Court's defined asset over which
5 the Utah Court and the Receiver have control. The receivership order (ECF 108-1) does
6 not claim ownership of Plaintiff's breach claim, nor has Plaintiff shown that its breach
7 claim has been surrendered to the Receiver's control.

8 Further, Plaintiff has made no showing that litigating liability of and defenses to
9 its breach claim will negatively impact a single asset in the receivership. If Plaintiff
10 proceeds independently against the personal guarantor Intervenor, there is no impact on
11 the assets of the receivership. If Intervenor's claims and defenses are successful the
12 value of the receivership assets will be diminished but will increase.

13

14 **4. The Utah Court appears to be attempting to exercise jurisdiction
15 over the breach claim not before it.**

16 The receivership order (ECF 108-1) includes language as to what any party and
17 even non-receivership parties in the Utah litigation may and may not do in this separate,
18 first-filed action litigation. In the Utah litigation, the undersigned requested the Utah
19 Court to stay its proceeding pending resolution of the Plaintiff's breach claim filed in this
20 case. The Utah Court denied the request and proceeded to take evidence and testimony
21 related to Plaintiff's breach claim over objection.

22

23

1 **5. Plaintiff's breach claim in this Court is continuing.**

2 In Plaintiff's opposition (ECF 110), Plaintiff makes no representation about
3 dismissing its claims in this action. As a result, Plaintiff's breach claim continues.

4 In relation to the breach claim, Plaintiff Lex Vest demanded that Intervenor sign
5 a personal guarantee as a condition of granting further loans. Plaintiff brought Intervenor
6 into this dispute. Defenses to breach of contract include those asserted in the ECG
7 amended answer and counterclaims (ECF 44).

8 Even if ECG dismisses the counterclaims of ECF 44, Plaintiff's breach claim
9 may continue. Intervenor, and personal guarantor in the breach issue, has established her
10 lawful need to defend against any continuing claim that could posit liability in her under
11 the breach claim. The need for intervention is Plaintiff's own making.

12

13 **6. Intervenor's claims do not appear to be derivative of ECG's claims.**

14 As shown in the loan papers asserted and filed by Plaintiff in this action,
15 Intervenor-Guarantor is a direct signature party to the loan agreement itself, not just as
16 Personal Guarantor, as shown in ECF 9-1, page 10 of 91. The loan agreement purports to
17 require Intervenor-Guarantor to perform acts of ECG if ECG does not perform them. For
18 example, at ECF 9-1, page 5 of 91, section 6 defines events of default of the loan
19 agreement including (i) if Guarantor fails "to perform any covenant, condition,
20 requirement, or agreement required to be observed or performed by Borrower[-ECG] ...
21 under this Agreement" in 6(a); and (ii) if Guarantor is proven to have made any false
22 warranty, representation or statement related to the loan in 6(c). This conduct of
23 Intervenor-Guarantor allegedly impacts compliance with the loan agreement directly.

1 Also, Intervenor is allegedly subject to liability independent of ECG:

2 As more particularly set forth in the Personal Guaranty, Guarantor shall be jointly and
3 severally liable in the first instance for any default on the part of the Borrower without
 regard to whether collection remedies are pursued first as against the Borrower.

4 (ECF 9-1, pg. 9 of 91, section 24). If enforced, this could provide Plaintiff an independent claim
5 against Intervenor.

6 These kinds of liability and involvement are direct, not derivative. Intervenor should not
7 be denied the opportunity to defend herself as a signatory to the loan document and the separate
 Personal Guarantee.

8

9

7. Potential remaining claims against Plaintiff

10 Should Plaintiff elect not to pursue its amended claims against Jennifer Karony
11 (ECF 101-2), Intervenor is not precluded from seeking claims against Plaintiff whether
12 by this motion for intervention or by a separately filed action. It is judicially efficient to
13 avoid duplicity to have Intervenor's claim continue in this action where the parties and
14 many material documents related to Intervenor's claims are already before the Court
15 and/or of record.

16 Intervenor has met the standards of intervention pertaining to both intervention by
17 right and permissive intervention. Intervenor's motion to intervene against Plaintiff
18 should be granted.

19 Dated this 7th day of June, 2023.

20

DUREN IP

21

22

/s/ Todd E. Zenger

23

Todd E. Zenger
Duren IP, PC
610 E. South Temple Street

Suite 300
Salt Lake City, UT 84102
801-869-8535
Email: tzenger@durenip.com

Jeffrey J. Whitehead
Whitehead & Burnett
6980 O'Bannon Dr.
Las Vegas, NV 89117
702-267-6500
Fax: 702-267-6262
Email: jeff@whiteheadburnett.com

10

11

12

13

14

15

16

17

18

19

20

21

22

1

CERTIFICATE OF SERVICE

I certify that the foregoing paper was filed using the Court CMF electronic filing system this 7th day of June 2023, thereby causing service upon the following with Ms. Renneker being served a copy separately at the email below:

5

Adam R. Knecht
Jessica Renneker
Lex Technica LTD
10161 Park Run Drive
Suite 150
Las Vegas, NV 89144
702-241-8585
Email: adam@lextechnica.com
Email: jess@lextechnica.com

10

11 Michael R. Kealy
12 Ashley Christine Nikkel
13 Parsons Behle & Latimer
14 50 W. Liberty Street, Suite 750
15 Reno, NV 89501
16 775-323-1601
17 Fax: 775-348-7250
18 Email: mkealy@parsonsbehle.com
19 Email: anikkel@parsonsbehle.com

16

/s/ Todd E. Zenger

17

18

19

20

21

22

23